

FISCAL NOTE

Bill #: HB0066

Title: Clarify Attorney General's role in bankruptcy and debt collection proceedings

Primary Sponsor: Harris, C

Status: As Introduced

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
General Fund	\$75,340	\$75,340
State Special Revenue	\$7,431	\$7,431
Federal Special Revenue	\$14,424	\$14,424
Revenue:		
Other	\$103,094	\$103,094
Net Impact on General Fund Balance:	(\$75,340)	(\$75,340)

- | | |
|---|--|
| <input type="checkbox"/> Significant Local Gov. Impact | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts |
| <input type="checkbox"/> Dedicated Revenue Form Attached | <input checked="" type="checkbox"/> Needs to be included in HB 2 |

Fiscal Analysis

ASSUMPTIONS:

Department of Justice

1. State agencies will be required to use the Bankruptcy Unit that exists within the Department of Justice.
2. The proposed bankruptcy unit will use the same billing rate as Agency Legal Services of \$70 per hour.
3. Revenue generated will cover estimated expenditures of \$129,942 in FY 2004 and \$129,649 in FY 2005. (proprietary funding in Governor's budget).
4. FY 2002 collections were \$48,703. Mandated usage of bankruptcy unit will increase revenue generated over FY 2002 by \$81,239 and \$80,946 for FY 2004 and FY 2005, respectively.
5. Authority for bankruptcy unit expenditures will be from the Agency Legal Services budget.
6. The department assumes that bankruptcy filings will continue to rise, particularly among business and corporations now using bankruptcy as a business management tool. In the past year, Montana has filed claims against WR Grace, Worldcom, Enron, Washington Corporation and several other large bankruptcies that total millions of dollars.

Department of Environmental Quality

7. Assumptions 8-12 will address major bankruptcies. Assumptions 13-14 will address minor bankruptcies.

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8. One major bankruptcy will be filed or continued during the biennium outside of Montana.
9. Attorney general staff will write major portions of briefs and other documents filed in bankruptcy court, review documents prepared by contracted local bankruptcy counsel within the bankruptcy district, and participate in strategy conferences.
10. The DEQ will continue to contract with local bankruptcy counsel within the bankruptcy district who will review attorney general staff documents, write portions of briefs and other documents filed by DEQ, and represent DEQ at bankruptcy hearings.
11. The Bankruptcy Unit charges \$70 per hour for attorney time. The department will reduce the number of hours contracted out with outside counsel to offset the costs of using the unit. Because bankruptcy proceedings vary greatly in complexity, the DEQ is unable to determine cost estimates.
12. The DEQ's major bankruptcy cases often involve out-of-state corporations, thus the venue often is outside Montana. The attorney general's staff will not travel to court hearings in the out-of-state bankruptcy district and DEQ will still need to contract with legal counsel licensed to practice in that state, for example, Pegasus Corporation bankruptcy proceedings currently are held in Reno, Nevada.
13. Four minor bankruptcies that require significant legal services will be pending each fiscal year during the 2005 biennium. The significant legal services will be provided by the Attorney General's Office. Minor bankruptcies currently are handled by existing DEQ department legal staff. This bill will free up some staff time, but not enough to reduce any positions.
14. An average of 25 hours per minor bankruptcy will be spent by the Attorney General's Office. At \$70 per hour, the cost calculates to \$7,000 per year. ($4 \times 25 \times 70 = 7,000$). This cost will be absorbed by the agency.

Public Health and Human Services

15. The Child Support Enforcement Division (CSED) will assume the same level of bankruptcy participation as in the current caseload.
16. CSED staff will continue to review cases, determine whether a claim is necessary, determine the amount of priority and non-priority debt, determine whether certain collection actions are stayed, and monitor the status of bankruptcy.
17. The Department of Justice charges \$38.00 per hour for paralegal and \$70.00 per hour for legal bankruptcy services.
18. It is estimated CSED will utilize the Department of Justice paralegal services for 38 hours per month and legal services for five hours per month for an annual cost of \$21,528 ($38 \text{ hours} \times 12 \text{ months} \times \$38 = \$17,328$; $5 \text{ hours} \times 12 \text{ months} \times \$70 = \$4,200$).
19. Over 83 percent (33,370) of the 40,121 CSED case files are located in regional offices. The files must remain in the regional offices throughout the bankruptcy proceedings. For the Department of Justice to offer legal and paralegal assistance in the bankruptcy area, portions of case files would have to be copied and mailed or faxed to Helena, adding increased fax and postage expenses.
20. There will be an increase of 12 faxes per month and an increase of 12 mailings per month for a total increased operation cost of \$327. ($144 \text{ faxes} \times \$2.7 = \$39$; $144 \text{ mailings} \times \$2.00 = \$288$)
21. The expenses would be paid at the rate of 66 percent federal and 34 percent state special revenue.

Department of Labor and Industry

22. The proposed legislation impacts the Montana Department of Labor and Industry in the operation of three of its programs: Unemployment Insurance Benefits Overpayment, Wage and Hour, and Uninsured Employers' Fund.
23. Currently the Attorney General charges \$70/hour for the services of its bankruptcy attorney and \$38/hour for the services of its bankruptcy paralegal. The Bankruptcy Unit presently utilizes varied rates as a contingency fee (usually between 25 percent to 50 percent of any collections). It is unknown if or when these rates may change or whether the Attorney General will apply an hourly or contingency fee in any particular bankruptcy case.

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24. It is unknown whether agency staff will continue to file proof of claims with the Bankruptcy Court or whether this duty will be assumed by the Attorney General, resulting in increased expense to the DOLI.
25. The proposed legislation will result in higher costs to the DOLI for the Attorney General's increased authority, oversight and responsibility regarding bankruptcy filings.
26. A specific fiscal impact cannot be determined because the degree of additional assistance that the Attorney General will provide cannot presently be determined. Since each bankruptcy case is unique, an average amount of attorney/paralegal hours spent on a case cannot be estimated. Moreover, the Attorney General presently has unilateral discretion to seek either an hourly or variable contingency fee from this agency for bankruptcy services rendered.

Unemployment Insurance Division

27. In FY 2003, the Unemployment Insurance Division received 37 bankruptcy notices involving \$46,000 of debt (23 fraud cases involving \$36,000 of fraudulent overpayments and 14 non-fraud cases involving \$10,000 of non-fraud overpayments). Based upon this information, it is estimated that the 2005 biennium could involve 92 unemployment benefit fraud cases and \$144,000 of debt and 56 non-fraud unemployment benefit cases and \$40,000 in debt for a total of 148 cases and \$184,000 in debt to the Unemployment Insurance Division.

Wage and Hour Bureau

28. In FY 2003, the Wage and Hour Bureau closed 15 wage claims due to bankruptcy. These claims involved a total of \$35,000 in wages due various claimants. Based on this information, it is estimated that the 2005 biennium could involve the closing of 60 wage claims totaling \$140,000 in debt to wage claims.

Uninsured Employers' Fund

29. In FY 2003, the Uninsured Employers' Fund had received nine bankruptcy filings involving \$43,000 in debt. Based on this information, it is estimated that the 2005 biennium could involve 36 bankruptcy filings totaling \$172,000 in debt to the Uninsured Employers' Fund.

Department of Revenue

30. The Department of Revenue (DOR) currently has a contract with the Department of Justice (DOJ) for bankruptcy service. Under this contract, DOR pays DOJ for services rendered at a rate of \$70/hour for attorney fees and \$38/hour for paralegal fees.
31. It is estimated that the DOR will pay the DOJ \$10,000 under the existing contract for legal in some, but not all of DOR bankruptcy matters.
32. In each fiscal year it is estimated that DOJ would provide assistance on 450 cases per year.
33. Each case would require one hour of DOJ attorney case review at \$70/hour for a total of \$31,500 (450 x \$70).
34. Each case would require 0.5 hours of DOJ proof of claim review at \$38/hour for a total of \$8,500 (225 x \$38).
35. In addition, it is estimated that there would be 120 hours of case negotiation and discussions involving DOJ attorneys for a total of \$8,400 (120 x \$70).
36. Each case would require DOJ prep/review work of 0.5 hours at \$70/hour for a total of \$15,750 (225 x \$70).
37. It is estimated that DOJ would attend 14 hearings outside of Helena at nine hours per hearing (8 hours travel and appearance and 1 hour of preparation time). This would total \$8,820 (14 x 9 x \$70).
38. It is assumed that two of the 14 hearings would be appealed. DOJ assistance in the appeal process would be 88 hours for each case (8 hours travel and appearance and 80 hours preparation time) at \$70/hour. This results in a cost of \$12,320 (88 x 2 x \$70).
39. The total cost of DOJ assistance (assumptions 33 through 38) each fiscal year is estimated to be \$85,340.
40. The proposal is effective on passage and approval. For purposes of this fiscal note it is assumed that the proposal will be effective April 1, 2003, and thereby be effective for the last quarter of FY 2003.

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41. Current law payments from DOR to DOJ for the last quarter of FY 2003 are estimated to be \$2,500 (\$10,000 / 4).
42. Under the proposal, payments from DOR to DOJ for the last quarter of FY 2003 are estimated to be \$21,335 (\$85,340 / 4).
43. The net increase in payments from DOR to DOJ in the last quarter of FY 2003 are estimated to be \$18,835 (\$21,335 - \$2,500).
44. The net increase in payments from DOR to DOJ in FY 2004 and each succeeding fiscal year are estimated to be \$75,340 (\$85,340 - \$10,000).

Other State Agencies

45. Seven other state agencies have responded with no fiscal impact.

FISCAL IMPACT:

	<u>FY 2004 Difference</u>	<u>FY 2005 Difference</u>
Department of Revenue		
<u>Expenditures:</u>		
Operating Expenses	\$75,340	75,340
<u>Funding of Expenditures:</u>		
General Fund (01)	\$75,340	\$75,340
 Department of Public Health and Human Services		
<u>Expenditures:</u>		
Operating Expenses	\$21,855	\$21,855
<u>Funding of Expenditures:</u>		
State Special Revenue (02)	\$7,431	\$7,431
Federal Special Revenue (03)	<u>\$14,424</u>	<u>\$14,424</u>
TOTAL	\$21,855	\$21,855
 Department of Justice		
<u>Revenues:</u>		
Other	\$103,094	\$103,094
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
General Fund (01)	(\$75,340)	(\$75,340)
State Special Revenue (02)	(\$7,431)	(\$7,431)
Federal Special Revenue (03)	(\$14,424)	(\$14,424)

TECHNICAL NOTES:**Department of Justice**

1. There has been no history of centralizing the bankruptcy function for the state. It is not possible to estimate the actual revenue and expenditures for a bankruptcy operation. If volume becomes higher than

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reflected on this fiscal note, additional authority would be necessary for the operation to function at full capacity.

Department of Labor and Industry

2. The Social Security Act specifies that unemployment insurance benefit overpayments owed by claimants, and unemployment insurance taxes owed by employers cannot be reduced to pay the Attorney General's fees resulting from any work they may perform as a result of this bill. The department will have to add the costs imposed by the Attorney General to the amount to be collected.
3. If the Bankruptcy Judge discharges the debt, the department has no means to pay the Attorney General's expenses incurred in the case. The department would discuss potential funding mechanisms with the Attorney General's office